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UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

NATIONAL URBAN LEAGUE, et al.,

Plaintiffs,

v.

WILBUR L. ROSS, JR., et al.,

Defendants.

CASE NO. 5:20-cv-05799-LHK

**PLAINTIFFS' RESPONSE TO ORDERS  
 RE: COMMUNICATIONS WITH THE  
 COURT (DKTS. 220, 221, 224, 229)**

Date: TBD  
 Time: TBD  
 Place: Courtroom 8  
 Judge: Hon. Lucy H. Koh

1 Plaintiffs submit this Response to Order Re: Communications with the Court (Dkt. 220),  
 2 Order Re: Communications with the Court (Dkt. 221), Order for Response to Email to the  
 3 Courtroom Deputy (Dkt. 224, referring to Dkt. 222), and Order Re: Communications with the  
 4 Court (Dkt. 229). For the reasons set forth below, Plaintiffs believe that the emails and evidence  
 5 submitted by the concerned census workers indicate that Defendants' are not fully complying with  
 6 the Court's TRO and Preliminary Injunction. As noted in Plaintiffs' statement from earlier today  
 7 (Dkt. 243), Plaintiffs intend to file a separate motion addressing Defendants' various violations of  
 8 the Court's orders, which will further address these recent communications with the Court as  
 9 appropriate. Because time is of the essence, Plaintiffs also ask the Court, as expeditiously as  
 10 possible, to direct Defendants to issue a new text message that wind down operations should not be  
 11 occurring, and that the October 5 "target date" is not operative.

12 **A. Melissa Garza (Dkt. 220) and Anonymous CFS #1 (Dkt. 221)**

13 Ms. Garza, a CFS in Southern California, paints a troubling picture of the Bureau closing  
 14 out some cases, but not others, for reasons that a "manager stated" were "political." Dkt. 220 at 2.  
 15 As Plaintiffs understand it, Ms. Garza is reporting that after only one attempt, thousands and  
 16 thousands of households are being marked complete in at least Southern California and South  
 17 Texas without any enumeration. Whereas other households are receiving as many as 26 actual  
 18 attempts to close.

19 This appears to be both a violation of the Court's TRO, which prohibited the Bureau from  
 20 changing NRFU operations to those outlined by the Replan, but also appears inconsistent with the  
 21 Bureau's guidance in response to the Court's TRO of "making six contact attempts" (Dkt. 86,  
 22 Attach. C). It also shows a disregard for obtaining an accurate count. Ms. Garza explains that  
 23 Bureau management is well aware of the issue, but no action has been taken to release these cases  
 24 back to enumerators. Indeed, it seems unlikely that the Bureau would do so, as it will want to  
 25 publicize 99% completion by its new October 5 deadline, without regard to whether an  
 26 enumeration has happened. This is consistent with Ms. Garza's account that the Pasadena ACO is  
 27 pushing hard to get to 100% despite "deliberately excluding" these cases. Dkt. 220 at 2.

1 The anonymous emailer corroborates Ms. Garza’s story, identifying a similar number of  
 2 cases for the Pasadena ACO and that “multiple Census Field Managers” acknowledge that these  
 3 were not properly closed. Dkt. 221 at 2. The anonymous emailer describes that the Regional  
 4 Census Office has “resisted calls to reopen these cases” even after the Court’s Preliminary  
 5 Injunction order. *Id.* There is a reference to “a Bureau memo” that is being cited to allow the  
 6 Bureau to close these cases without enumerating them.

7 Ms. Garza’s and the anonymous emailer’s accounts are not alone. Plaintiffs have heard  
 8 similar stories regarding similarly closed cases from a CFS in North Carolina and a CFS in  
 9 Massachusetts.

10 Plaintiffs believe it would be appropriate to have Defendants identify and produce for the  
 11 Court and Plaintiffs the memorandum mentioned by the anonymous emailer (Dkt. 221), with an  
 12 explanation by way of a declaration for why no enumeration is appropriate for thousands of cases  
 13 across the country after only one attempt.

14 **B. Gregory Dillon (Dkt. 222)**

15 Mr. Dillon, a CFS in San Francisco, provides details that Defendants have refused to  
 16 provide on a number of relevant topics. First, Mr. Dillon was “verbally instructed to take further  
 17 accuracy reducing shortcuts to get the work completed ASAP,” contrary to the Bureau’s own  
 18 manuals. *Id.* Mr. Dillon also noted other “shortcut processes . . . communicate orally” outside the  
 19 normal channels to get done quickly. *Id.* Although Mr. Dillon did not expand on what exactly is  
 20 being done to reduce accuracy, again, operations on the ground show a disregard for an accurate  
 21 count over a desire to simply declare completion. While the Bureau is best-positioned to make  
 22 calls about day-to-day operation, Mr. Dillon’s account shows that despite the Court’s orders,  
 23 instructions remain to move quickly to the end of September, rather than being thorough,  
 24 complete, and accurate working toward a later deadline.

25 Second, Mr. Dillon notes that in “Non written verbal conversation,” Replan deadlines  
 26 “were further shortened.” Dkt. 222 at 2. At the field level, managers are hostile to the idea of  
 27 complying with the Court’s orders. *See id.* at 2-3. Despite the Court’s TRO, Mr. Dillon’s staff  
 28 “was cut in half,” and he “was told to return the caseload to the office.” *Id.* at 3. While phasing

1 out operations in the field would generally be appropriate with certain benchmarks being hit, if  
 2 coupled with accuracy-reducing operations, then these steps may have been in violation of the  
 3 Court's TRO.

4 Third, Mr. Dillon explains that the Court's TRO was not communicated to his level. This  
 5 was corroborated on the other side of the country by the North Carolina CFS mentioned above.  
 6 Along with Mr. Christy's vague declaration of September 28 (Dkt. 219-1), Mr. Dillon's account is  
 7 the type that prompted Plaintiffs at yesterday's CMC to ask for a declaration from Defendants  
 8 describing the communications that have been provided to the field. Mr. Christy's new declaration  
 9 and attachments (Dkt. 234-1, 234-2) still leave it unclear what exactly the Bureau told the field to  
 10 do. As to the TRO, nothing states that information about that order was flowed down to the CFS  
 11 and enumerator level, consistent with Mr. Dillon's account. After the Court entered the  
 12 Preliminary Injunction on September 24, Mr. Christy states there was a call at 10:30am Eastern on  
 13 September 25 "to discuss the issuance of the order." Dkt. 234-1 ¶ 11. But the agenda he attached  
 14 makes no mention of the order. *See* Dkt. 234-2, Attach. 4. When Mr. Christy sent an email later  
 15 that day "to all managers working on field operations at Headquarters and in the regions," his  
 16 guidance was to "continue to conduct NonResponse FollowUp (NRFU) and other field operations  
 17 as planned." Dkt. 234-1 ¶ 12; Dkt. 234-2, Attach. 5. "As planned" seems to be a reference to the  
 18 Replan, or at least could very well be interpreted that way by those receiving his email. Only after  
 19 yesterday's CMC was the Court's Preliminary Injunction order communicated to the CFS and  
 20 enumerator level—via text message—along with the announcement of the new October 5 "target  
 21 date" for end of NRFU operations. *See* Dkt. 234-1 ¶¶ 14-15; Dkt. 231.

22 Plaintiffs ask the Court to direct Defendants to issue a new text message that wind down  
 23 operations should not be occurring, and that the October 5 date is not operative.

#### 24 **C. Anonymous CFS #2 (Dkt. 229)**

25 The second anonymous emailer also appears to be a CFS under the Los Angeles regional  
 26 office. This communication shows that, even after the Court's Preliminary Injunction, the Bureau  
 27 was providing new guidance to complete counting by September 30. While there is nothing  
 28 ostensibly wrong with completing enumeration, if coupled with kind of non-verbal, accuracy

1 reducing direction as described above by Mr. Dillon, it again shows an intent to disregard the  
2 Court's orders and the need for accuracy.

3  
4  
5 Dated: September 29, 2020

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**ATTESTATION**

I, Sadik Huseny, am the ECF user whose user ID and password authorized the filing of this document. Under Civil L.R. 5-1(i)(3), I attest that all signatories to this document have concurred in this filing.

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